

CTEP SPECIAL PROVISIONS

SECTION 101 DEFINITIONS AND TERMS

101.1004 ADDENDUM OR AMENDMENT

Contract revisions developed after advertisement and before opening proposals.

101.1020 CONTRACT BOND

The approved security on the Owner's form, executed by the Contractor and its surety or sureties, guaranteeing the complete execution of the Contract and all supplemental agreements thereto and payment of all legal debts pertaining to the construction of the project.

101.1100 BID PACKAGE

The terms Bid Package, Project Manual, Contract Documents, and Proposal are used interchangeably throughout the bid package and includes the Bidding Requirements, Conditions of the Contract, General and Special Requirements, and project drawings.

SECTION 102 BIDDING REQUIREMENTS AND CONDITIONS

102.1001 JOINT-VENTURE BIDS

Execute a "Declaration of Joint Venture and Power of Attorney" form available from the Owner to submit bid packages for highway construction as a joint venture. Designate the joint venture business name and specifically authorize a person to execute all bid packages and contracts with the Owner on behalf of all individuals and legal entities of the joint venture. Authorize this person to receive all monies due under the Contract and issue binding receipts and releases with the Owner. Include joint-venture affidavits in the proposal (bid submittal).

Joint venture firms do not need to separately incorporate.

102.1002 CONTENTS OF BID PACKAGE (PROJECT MANUAL)

The bid package ordinarily includes the following:

- A. Proposal
- B. Disadvantaged Business Enterprise (DBE) Requirements
- C. Schedule of Items
- D. Special Provisions
- E. Current Supplemental Provisions (Supplemental Specifications/Supplemental Conditions to the General Conditions)
- F. Wage Rate Schedules
- G. Other documents included by reference but not attached
- H. FHWA Form 1273 Required Contract Provisions for Federal-Aid Construction Contracts
- I. EEO Affirmative Action Requirements on Federal and Federal-Aid Construction Contracts
- J. Contract Plans (Drawings)

Documents submitted with or attached to the proposal form are a part of the bid. Do not detach or alter attached documents when the bid package is submitted.

102.1003 CONTRACTOR REGISTRATION

Montana law requires all contractors to register with the Montana Department of Labor.

Register before executing a contract on Federal-aid projects.

Register before submitting a bid on State-funded projects.

Contact the Department of Labor at 1-406-444-7734 for more information.

102.1004 ISSUANCE OF PROPOSALS

The Owner reserves the right to refuse to issue a bid package to a bidder for any of the following reasons:

- A. Uncompleted work that the Owner determines might hinder or prevent the prompt completion of additional work.
- B. Default under previous contracts.
- C. Failure to reimburse the Owner for overpayment's made on any contract or contracts after written notification of the overpayment(s) that are due.
- D. Failure to pay, or satisfactorily settle, all bills due for labor and material on any Contract in force at the time of issuance of proposals.
- E. Unsatisfactory performance on previous or current Contract(s).
- F. Misconduct that is of such a serious nature as to adversely affect the Contractor's ability to perform future work.

102.1005 QUANTITIES OF WORK IN THE BID PROPOSAL

Submit unit bid prices for the estimated quantities.

Estimated quantities may be increased or decreased under the Contract. Payment is made for the actual quantities of work performed and accepted or materials furnished under the Contract.

102.1006 EXAMINATION OF DOCUMENTS AND SITE OF WORK

Examine the site of the proposed work including existing field staking and documents before submitting a proposal. Submitting a proposal is an affirmative statement by the bidder that the bidder has examined the site and is satisfied with the conditions to be encountered in performing the work and the bid package requirements.

The Owner is not bound by any statement or representation concerning conditions or description of the work unless included in the bid package. Do not rely on oral explanations or instructions given by Owner employees or agents before award of the Contract. Accept these as non-binding oral explanations or instructions and relying on them is solely at the Bidder's risk.

Immediately submit any request for an explanation of the meaning or interpretation of the bid package in writing to the Engineer.

The records of any subsurface investigations conducted by the Owner are available for inspection as a public document. When not included in the bid package, inspect available records at _____, _____, _____, MT 59_____-_____.
_____, MT 59_____-_____.

The records of subsurface investigations are not a part of the bid package or contract, but are available to all bidders for informational purposes only. There is no warranty or guaranty, either expressed or implied, that the subsurface investigation records will disclose the actual conditions that will be encountered during the performance of the work. Owner subsurface investigation results may differ from a bidder's independent subsurface investigation due to different sampling techniques, the date of the investigation, etc.. Using
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or relying on Owner subsurface investigations is at the bidder's risk. The Bidder must perform and rely on its independent subsurface investigations made before submitting a bid proposal. Submittal of a bid is an affirmative statement that an independent subsurface investigation was made and Owner subsurface investigations were not relied on.

Individual test boring log data included in the Owner's subsurface investigation records apply only to that particular boring taken on the date indicated. The character of any material or conditions between or around test borings on the date of the site examination are not conclusive.

Submission of a bid waives any potential claim of the above, including a claim of justifiable reliance on such information or materials.

Do not take advantage of an apparent error, omission or ambiguity in any part of the bid package. Upon discovery, immediately notify the Engineer in writing if an error, omission, or ambiguity exists and why it appears erroneous, omitted, or ambiguous. Advise bidders submitting a subcontract quotation of this obligation and clarify their responsibility to include this information with their subcontract quotation. The Owner will clarify the error, omission, or ambiguity and, if necessary and possible, issue an addendum to all prospective bidders before opening bid packages.

Do not submit a bid proposal or a subcontract quote without receiving clarification. Failure to provide written notification is a waiver of the error, omission or ambiguity, and additional compensation or contract time will not be allowed.

102.1007 BIDDING REQUIREMENTS

The bid submitted is to be the entire bound Project Manual obtained from the Owner or Engineer.

Bids are opened at the designated time and inspected to determine if the following requirement are met:

- A. Unit prices: Are provided for all required bid items.
- B. Proposal Guarantee: If a bid bond; it is on the Owner furnished form; is signed and sealed in the proper places; a copy of the agent's Power of Attorney for the Insurance Company is attached; and contains the correct and complete project number; all signatures are original (stamped signatures are unacceptable).
- C. Addenda: All addenda are acknowledged.
- D. Proposal: Is signed and notarized in the designated places; all signatures are original (stamped signatures are unacceptable).

A bid is non-responsive if the above requirements are not met. For non-responsive bids, only the Contractor's name will be announced at the letting.

The Owner retains non-responsive bids.

Submission of a bid is evidence that sufficient time was available to adequately prepare a bid proposal and conduct a complete investigation of the site of the work and all Contract documents.

102.1008 REJECTION OF BID PROPOSALS

The Owner reserves the right to reject bid proposals, waive technicalities, or advertise for new proposals.

A bid proposal is irregular and will be rejected as non-responsive if:

- A. Bidder fails to properly sign the bid proposal.
- B. There are unauthorized additions, conditional or alternate bids, or irregularities that make the bid package incomplete, indefinite, or ambiguous.
- C. The proposals for two or more projects advertised separately are connected or made contingent one upon the other so that the proposal for one project carries a provisional deduction in the bid price on one or more of the other projects.
- D. Any unauthorized provisions are added reserving the right to accept or reject an award or to enter into a contract pursuant to an award.
- E. More than one proposal for the same work from an individual, firm, corporation, partnership, or joint venture under the same or different name is submitted.
- F. Evidence of collusion among bidders exists. Participants in collusion will not receive recognition as bidders, either singly or as a joint venture, for future work of the Owner until re-instated as qualified bidders.

A bid proposal is considered irregular and may be rejected as non-responsive if:

- A. The Owner furnished bid proposal is altered.
- B. Bidder fails to include a name and mailing address.
- C. The unit prices contained in the proposal are obviously unbalanced, either in excess of or below the reasonable cost-analysis value.
- D. Information entered in the proposal by the bidder is not legible.
- E. There are changes in the proposal such as erasures, strikeouts, and white-outs that are not initialed in ink.
- F. Non-compliance with Disadvantaged Business Enterprise (DBE) requirements.

102.1009 PROPOSAL GUARANTY

Make the proposal guaranty unconditionally payable to the Owner. Provide the guaranty by cash, cashier's check, certified check, bank money order, or bank draft with the bid proposal. The guaranty must be drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of the State, or a bid bond or bonds executed by a surety corporation authorized to do business in the State.

102.1010 DELIVERY AND PUBLIC OPENING OF PROPOSALS

Place the bid proposal in a sealed envelope plainly marked to indicate the contents. Mail or deliver to: _____, _____, P.O. Box _____, _____, Montana 59____ - ____.

Bid proposals are opened and read publicly at the place, time, and date specified in the " Invitation for Bids".

Deliver by the date and hour set for the opening of bid proposals to the Owner designated officials conducting the bid opening. Bid proposals received after the specified time are returned to the bidder unopened.

The bid opening time is determined by the clock designated by the Owner's bid opening officials.

Mailed proposals must be received by the Owner's official conducting the bid opening before the bid opening time. The Contractor is solely responsible for the proposals delivery.

Do not submit bid proposals by facsimile machines.

A prematurely opened bid proposal not properly addressed and identified is returned to the bidder.

102.1011 WITHDRAWAL OR REVISION OF PROPOSALS

Submit withdrawal requests to the Owner in writing or telegram before the time set for opening bid proposals. A bidder may withdraw any proposal in person or through an authorized agent before any bid proposal on that project is read.

102.1012 DEBARMENT

Federal statutes, and regulations adopted pursuant to federal statutes, require that any firm or individual submitting a bid on a federal aid project certify compliance with Part XI of Form FHWA 1273 (Required Contract Provisions-Federal Aid Construction contracts) and that the firm or individual obtain and furnish the Owner certification that all subcontractors, material suppliers, vendors, and other lower tier participants used are in compliance with Part XI of Form 1273.

Make certifications part of each subcontract, material supply agreement, purchase order, or other covered lower tier transaction. Covered lower tier transactions include primary material purchases for contract items incorporated into the work.

The Owner's debarment policies and procedures are in the Administrative Rules of Montana, beginning at Section 18.3.101.

102.1013 MATERIALS GUARANTY

The successful bidder may be required to furnish a complete statement of the origin, composition, and manufacture of materials to be used in the construction of the work, together with samples to be tested for conformance with the Contract requirements. Include the costs of furnishing the statements and samples in the bid.

102.1015 VENUE

In the event of any dispute concerning a project, whether over its advertisement, bidding, award, execution, or claim, any litigation filed by or against the Owner will only have venue in _____.

102.1016 CONSENT TO CONTRACT PROVISIONS

The submission of a bid is an affirmative statement that the bidder and its proposed subcontractor(s) consents to all the bid package provisions upon which the bidder has submitted its bid. That consent extends to all portions of the bid package and applies to all the bidder's subcontractors. Do not submit a bid proposal unless consent to all the bid package provisions is given.

SECTION 103 AWARD AND EXECUTION OF CONTRACT

103.1001 CONSIDERATION OF PROPOSALS

Bid proposals will be compared on the basis of the summation of the item total prices shown in the bid schedule.

103.1002 AWARD OF CONTRACT

The Contract will be awarded within ____ calendar days after the bid opening to the lowest responsive, responsible, and qualified bidder whose bid proposal complies with all the requirements. The successful bidder will be notified in writing of the acceptance of the

proposal and the award of the Contract.

If the Contract is not awarded within ____ calendar days, all bid proposals will be rejected and the proposal guaranties returned. The Owner can extend the ____ day time period.

103.1003 ASSIGNMENT OF CLAIMS

In consideration of being awarded the Contract, the Contractor, on its own behalf and on behalf of its subcontractors, assigns to the Owner all claims or causes of action for any antitrust law violations, or damages arising therefrom, as to goods, materials, and services purchased under the terms of the Contract or any change order that may result from the Contract.

103.1004 CANCELLATION OF AWARD

The award of the Contract may be canceled at any time before the execution of the Contract by all parties without liability against the Owner.

103.1005 RETURN OF PROPOSAL GUARANTY

Except for the three lowest bidders, all proposal guaranties other than bid bonds will be returned immediately following opening and checking of the proposals. The retained proposal guaranties of the unsuccessful two lowest bidders will be returned within ____ calendar days following the award of the Contract. The successful bidder's proposal guaranty will be returned after a satisfactory contract bond has been furnished and the Contract has been executed.

103.1006 CONTRACT BOND

Furnish an executed contract bond or bonds in a sum equal to the Contract amount under the following Subsection, Execution and Approval of Contract. Use a form provided by the Owner and executed by a surety company authorized by law to transact business in the State.

103.1007 EXECUTION AND APPROVAL OF CONTRACT

Return to the Owner within ____ calendar days after receipt of the contract documents:

- A. The signed Contract,
- B. the contract bond,
- C. a copy of the insurance policy or a certificate of insurance,
- D. a copy of a current special fuel users permit issued under 15-70-302 MCA.

A proposal will not be binding unless all the above requirements have been satisfied.

Do not begin work before:

- A. The Contract is executed.
- B. Contract bond is completed.
- C. Evidence of the required insurance is provided.

The Contract, bond, and insurance are subject to legal approval after execution by the Contractor and Surety.

103.1008 FAILURE TO EXECUTE CONTRACT

Upon failure to execute the Contract and file acceptable bonds and insurance policies within ____ calendar days after receipt of the Contract, under 18-1-204, MCA, the award will be canceled and the proposal guaranty forfeited. Award may then be made to the next lowest responsive, responsible and qualified bidder, or the work may be re-advertised.

SECTION 107 LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

107.1001 LAWS, RULES AND REGULATIONS TO BE OBSERVED

Observe and comply with all of the following:

- A. Federal and State Laws and regulations;
- B. Local laws and ordinances; and
- C. Regulations, orders and decrees of bodies or Tribal ordinances having any jurisdiction or authority.

Protect and indemnify the Owner and its representatives against any claim or liability arising from the violation of any of the above-listed items, whether violated by the Contractor, a subcontractor, material man, or supplier, or any of their employees or agents.

Ensure compliance with and enforce all federal, state, and local safety standards (i.e. the Montana Scaffolding Act, etc.) for Contractor's workers and its subcontractor's workers on the project, protecting and indemnifying the Owner and its representatives from all claims, suits, damages or liabilities for all accidents or safety violations, and ensuring the public's safety. The Contractor is not to enforce safety standards for Owner employees.

Follow all rules and regulations of Federal, State, and local health officials. Do not require an employee of the Contractor or subcontractor(s) to work in surroundings, or under conditions that are unsanitary, hazardous or dangerous to health or safety. Admit any inspector of the OSHA or other legally responsible agency involved in safety and health administration without delay and without presentation of an inspection warrant to all areas of the work and project site upon presentation of proper credentials.

Follow Federal, State and local laws, rules and regulations regarding unlawful employment practices including race, religion, color, sex or national origin discrimination, and that define actions required for Affirmative Action and Disadvantaged Business programs.

Work within a State or National Forest is under the regulations of the authority having jurisdiction governing the forest.

Immediately notify the Engineer in writing if any discrepancy or inconsistency is discovered between the Contract and any law, ordinance, regulation, order or decree.

107.1002 PERMITS, LICENSES, AND TAXES

Obtain all legally required permits and licenses, pay all charges, fees, taxes, and fuel taxes, giving all notices necessary and incidental to the lawful prosecution of the work.

107.1003 PATENTED DEVICES, MATERIALS, AND PROCESSES

Do not use any design, device, material, or process covered by letters of patent or copyright, without a legal agreement with the patentee or owner. Indemnify and save harmless the Owner, any affected third party, or political subdivision from all claims for infringement for the use of any patented design, device, material or process, or trademark or copyright. Indemnify the Owner of all costs, expenses, and damages obligated for payment by reason of an infringement during the prosecution or after the completion of the project.

SECTION 108 PROSECUTION AND PROGRESS

108.1001 SUBCONTRACTING OR ASSIGNMENT OF CONTRACT

108.1001.01 Subcontracting.

Do not subcontract, assign, or otherwise dispose of more than 60% of any portion of the Contract cost without the written consent of the surety and the Owner.

Include in the written subcontract or assignment or in a separate written document with the assignment or subcontract the following language:

"In consideration of being awarded this subcontract, and in consideration of having this subcontract approved by the Owner, the Subcontractor hereby assigns to the Owner any and all claims or causes of action for any antitrust law violations, or damages arising therefrom, as to goods, materials, and services purchased under the terms of this subcontract or any change order that may result from this subcontract."

108.1001.02 Contract Performance.

Perform at least 40% of the Contract cost with the Contractor's organization. Designated Contract "Specialty Items" may be performed by subcontract without regard to the 40% limitation.

Where an entire item is subcontracted, the percentage of the total work subcontracted is based on the contract item bid price. When a portion of an item is subcontracted, the percentage of the work subcontracted will be based on either the subcontract item unit price or on an estimated percentage of the contract item bid price, determined by the Engineer.

Do not allow a Subcontractor to start work until it's subcontract is consented to by the Engineer. Include two executed and certified copies of the subcontract, a letter from the surety consenting to the subcontract, and a copy of the proposed subcontractor's current special fuel users permit issued under 15-70-302, MCA.

Do not subcontract or assign more than the allowable 60% by including additional labor, equipment, and supervision costs on the Contractor's payroll records to circumvent the subcontracting provisions.

Inform the subcontractor of all the Contract provisions. The minimum wage included in the Contract applies to labor performed on all work subcontracted, assigned, or otherwise disposed of.

Attach to each subcontract all required Contract provisions and predetermined minimum wage rates. Include in the subcontract these words: "The subcontractor agrees to comply with all of the labor provisions contained in the attached "Special Required Contract Provisions" and "Minimum Wage Determination."

All subcontractors are agents of the Contractor. The Contractor is responsible for all work, material furnished, and indebtedness incurred by the subcontractor.

Written consent to subcontract, assign or transfer the Contract does not release the Contractor from liability under the Contract and bond.

DOMESTIC MATERIALS: (ALL PROJECTS USING STEEL OR IRON MATERIALS)

Furnish domestic steel or iron materials for permanent incorporation in the work. Domestic material is material that all manufacturing processes, including coating of steel or iron, occur in the United States. Pig iron, and processed, pelletized and reduced iron ore may be manufactured outside the United States. Furnish the appropriate manufacturer's mill tests and certifications documenting the manufacturing processes, including coatings of

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covered materials, performed in the United States. A minimal quantity of foreign manufactured steel and iron material may be used if the cost of the material, including delivery costs to the project, does not exceed one-tenth of one percent of the total contract amount or \$2,500.00, whichever is greater. Do not incorporate steel or iron materials into the project until the proper documentation is furnished to the Engineer.

INDIAN RESERVATION WORK: (ALL PROJECTS ON INDIAN RESERVATIONS)

Because all or part of this project is located within the external boundaries of an Indian Reservation, the following requirements apply:

- A. Read, fully understand and agree to the provisions here included.
- B. Inquire with the Tribal officials and become familiar with the Tribal requirements for work on the Reservation, and submit bid with full knowledge, understanding and acceptance of them.
- C. If Tribal requirements will in any way increase the costs of performing the project, consider those and include any and all increased costs in bid prices.
- D. Ensure that all proposed subcontractors are also fully aware of the Tribal requirements, and accepted them when they gave quotes.
- E. Understand and agree that employees, and all subcontractors and their employees, are responsible to the Tribe to adhere to and abide by all Tribal laws, ordinances and regulations on work performed on the Reservation, specifically including all Indian hiring and contract fee requirements.
- F. Dealings with the Tribe and its requirements are solely between the contractor and the Tribe, and must be addressed in the appropriate forum between them alone.
- G. By submitting a bid, agree to defend, protect, indemnify and save harmless the Owner from any cost or delay caused or allegedly caused by or due to the failure of bidder or any subcontractor to fully comply with Tribal law, ordinance or regulation, or by claimed interference by the Tribe. Claims from such failure or claimed interference will not be considered extra work or compensable delay, but actual, documented and verified interference by Tribal government may be grounds for a contract time extension. Understand that any requests must fully comply with the Contract's claims procedure.
- H. By submitting a bid, do so with full understanding and acceptance of all provisions of the Bid Package.
- I. For more information about Tribal requirements, it is required to contact the Tribe directly. Designated Tribal Point of Contact is _____.
- J. If a Pre-Bid Conference for the project is provided for in the Special Provisions, a designated, authorized agent of Bidder attends the Conference.